

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 03-46696

Patrick & Kim Bigley,

Debtor(s).

**NOTICE OF HEARING AND OBJECTION TO
CONFIRMATION OF CHAPTER 13 PLAN**

Michael Farrell, Chapter 13 trustee, by and through his undersigned attorney, hereby objects to confirmation of the Chapter 13 plan filed by Debtor.

1. The Court will hold a hearing on this motion at 10:00 a.m. on June 3, 2004, in Courtroom 7 West, United States Courthouse, 300 South 4th Street, Minneapolis, Minnesota.

2. Any response to this motion must be filed and delivered not later than 10:00 a.m. on June 2, 2004, which is 24 hours (1 business day) before the time set for the hearing, or filed and served by mail not later than May 28, 2004, which is three business days prior to the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

3. Michael Farrell is the Chapter 13 trustee ("Trustee") of the Debtor in the above-referenced bankruptcy case. This case is pending before this Court.

4. This Court has jurisdiction over this matter under 28 U.S.C. Section 157 and 1334. This objection is brought pursuant to 11 U.S.C. §1324 and 1325, Bankruptcy Rule 3015 and Local Rule 3015. This matter is a core proceeding.

5. Debtors commenced this case by filing a voluntary Chapter 7 petition on September 23, 2003 and converted to a Chapter 13 on March 17, 2004. Debtors filed a Chapter 13 plan on that date. The plan provides for payments of over a period 60 months, resulting in a dividend to unsecured creditors of 24 percent.

6. Trustee objects on the basis that Debtors not submitting all of their projected disposable income during the first three years into the plan. Debtors are contributing \$545 per month to 401k plans. Debtors are repaying directly 401k loans at a rate of \$346 per month. Debtors testified that they receive tax refunds of \$7,000 per year. Debtors should modify their plan to contribute these amounts into the plan. Debtors should add language to their plan that all tax refunds in the first three years of the plan will be paid into the plan.

7. Trustee objects to the confirmation of the plan on the basis that Debtor's plan does not include a provision that all of Debtor's disposable income during the first three years of the plan will be submitted to payment of the plan.

WHEREFORE, Michael Farrell requests an order as follows:

- (A) Denying confirmation of the Chapter 13 plan; and
- (B) Granting any other relief the Court deems just and proper.

Hedback Arendt & Carlson, PLLC

Dated: May 14, 2004

_____/s/ John A. Hedback_____
John A. Hedback, #142438
Attorney for Chapter 13 Trustee
2855 Anthony Lane South, Suite 201
St. Anthony, MN 55418
(612) 789-1331
Attorneys for the Movant

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

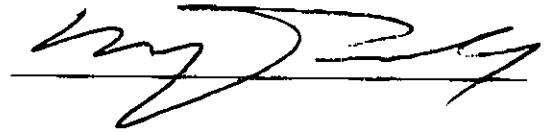
Patrick & Kim Bigley,

BKY 03-46696

VERIFICATION

The Trustee verifies under penalty of perjury that the information contained in the foregoing motion is true and correct to the best of the Trustee's knowledge, information and belief.

Dated 5-13-04

A handwritten signature in black ink, appearing to be "M. J. Bigley", is written over a horizontal line.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 03-46696

Patrick & Kim Bigley

MEMORANDUM

Debtor(s).

Michael Farrell, Chapter 13 trustee, (Trustee) hereby submit its memorandum of fact and law in support of its Objection to Confirmation (Motion).

I. STATEMENT OF FACTS

The facts supporting the Objection to Confirmation are set forth in the attached verified motion. In addition, Trustee also relies on the representations made by Debtor in their verified Schedules on file and of record herein.

II. STATEMENT OF LAW AND ARGUMENT

Section 1324 provides that a party in interest may object to confirmation of a plan. A Chapter 13 trustee would be such a party in interest.

Section 1325 provides that the Court shall confirm a plan if it meets certain requirements.

Section 1325(b)(1) provides that if an objection is filed by an unsecured creditor or the Chapter 13 trustee, the Debtor's plan must either pay unsecured creditors in full or provide for payment of all of Debtor's projected disposable income for the next three years. Disposable income is the amount of the income available after the payments reasonably necessary for the support of the Debtor and his dependents.

Disposable income is all income which is "not reasonably necessary to be expended... for the maintenance or support of the debtor or a dependant of a debtor..." (Section 1325(b)(2)(B)). Courts have consistently held that that voluntary contributions to 401k plans or repayment of 401k loans are not reasonably necessary for the support of the debtor. *In re Koch* 109 F.3e 1285 (8th Cir 1997). *In re FestnerI*, 54 BR 532(Bankr. E.D. N.C. 1985).

Hedback, Arendt & Carlson, PLLC

Dated: May 14, 2004

_____/e/ John A. Hedback____

John A. Hedback, #142438
2855 Anthony Lane South, Suite 201
St. Anthony, MN 55418

(612) 789-1331
Attorneys for Movant

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 03-46696

Patrick & Kim Bigley

**UNSWORN DECLARATION FOR
PROOF OF SERVICE**

Debtor(s).

The undersigned, being an employee of Hedback, Arendt & Carlson, PLLC, attorneys licensed to practice law in this Court, with office address of 2855 Anthony Lane, St. Anthony, MN 55418, declares that on the date below, I served the following:

1. Notice and Objection to Confirmation of Chapter 13 Plan;
2. Memorandum;
3. Proposed Order; and
4. Unsworn Declaration for Proof of Service.

upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at St. Anthony, MN addressed to each of them as follows:

Office of United States Trustee
1015 US Courthouse
300 South Fourth Street
Minneapolis, MN 55415

PATRICK & KIM BIGLEY
8780 AUTUMN OAKS DRIVE
ROCKFORD, MN 55373

ROBERT J EVERHART
PO BOX 120534
NEW BRIGHTON, MN 55112

Linda Jungers
430 OAK GROVE ST
STE 200
MPLS MN 55403

and I certify under penalty of perjury, that the foregoing is true and correct.

Dated: May 14, 2004

____/e/ John A. Hedback____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 03-46696

Patrick & Kim Bigley

**ORDER DENYING
CONFIRMATION OF
CHAPTER 13 PLAN**

Debtor(s).

This case came before the Court on the confirmation of Debtor's Chapter 13 plan. An objection to confirmation has been filed by Michael Farrell, Chapter 13 trustee. Appearances were noted on the record. Based on the file, record and proceedings herein,

IT IS HEREBY ORDERED: Confirmation of Debtor's Chapter 13 plan is hereby denied.

BY THE COURT

Dated: _____

U.S. Bankruptcy Judge